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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1047

CARLA A. HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
Petitioner,

v.

DOROTHY GAUTREAUX *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

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INTEREST OF AMICUS [1]

The National Education Association ("NEA") is an independent, voluntary organization of educators, open to any person who is actively engaged in the profession

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk of the Court pursuant to Rule 42(2) of the Rules of this Court.

of teaching or other educational work, or any person interested in advancing the cause of education. NEA presently has more than 1,700,000 regular members and is the largest professional organization in the nation. Pursuant to the terms of its charter, 34 Stat. 805 (1906), NEA's purpose is "to elevate the character and advance the interests of the profession of teaching, and to promote the cause of education in the United States."

In pursuit of these goals, NEA has supported school desegregation in the North and South and to that end has submitted briefs amicus curiae in such cases as *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Keyes* v. *School District No. 1, Denver*, 413 U.S. 189 (1973); *Richmond School Board* v. *State Board of Education*, 412 U.S. 92 (1973); and *Milliken* v. *Bradley*, 418 U.S. 717 (1974).

NEA believes that the scope of available relief for housing discrimination by federal and city agencies will have a significant bearing upon the extent of school segregation and quality of public education in the Nation's metropolitan areas. Recognizing that equity is "characterized by a practical flexibility in shaping its remedies and . . . adjusting and reconciling public and private needs," *Brown* v. *Board of Education*, 349 U.S. 294, 300 (1955), NEA files this brief for the purpose of urging the Court to take this relationship into account in passing upon the propriety of metropolitan remedies for such discrimination.

ARGUMENT

Metropolitan Relief for Public Housing Discrimination Serves the Public Interest in Desegregating Urban and Suburban Schools

Respondents have demonstrated that a metropolitan remedy is appropriate and necessary to redress the racially discriminatory housing practices of HUD and CHA. NEA endorses the factual and legal arguments presented by respondents and files this brief for the purpose of urging that there are other important considerations of public policy which will be served by a metropolitan remedy in this case. Among these considerations is that a metropolitan housing remedy will facilitate desegregation of schools in the Nation's metropolitan areas.

There is an urgent need for federal, state and local officials to take action that will desegregate the public schools in the Chicago and other major metropolitan areas. Statistics kept by the Department of Health, Education, and Welfare show that in 1970 75 percent of Chicago's black students attended schools in which no more than one percent of the student population was white. In 1972, 80 percent of Chicago's black students attended schools in which no more than one percent of the student population was white. In the 100 largest school districts in the United States in 1972, 42 percent of the black students were attending schools in which no more than one percent of the student population was white.[2]

Because of the extensive and growing concentration of blacks in inner city schools, minority children increasingly are on the receiving end of the inadequate education which characterizes inner city schools. As the President's Commission on School Finance[3] concluded in

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[2] Public Information Office, Office for Civil Rights, DHEW, "Negroes in 100 Largest (1972) School Districts, Ranked by Size, Number and Percentage Attending School at Increasing Levels of Isolation, Fall, 1970 and Fall 1972, Elementary and Secondary School Survey" (Table 3-A).

[3] The President's Commission on School Finance was appointed by the President of the United States pursuant to Executive Order 11513 of March 3, 1970, 3 CFR 900 (1970).

its final report, *Schools, People & Money* (1972) p. 43, the "children using these schools are being cheated of the opportunity to obtain a decent education." This conclusion does not depend upon the proposition that racial imbalance *per se* has adverse educational consequences. The dismal state of public education in the big cities is described by the President's Commission as follows:

> "The schools in the big cities are caught in two desperate crises—one financial, the other racial. And the two are becoming a single overriding emergency as inadequate funds affect school and education quality. Faced by rising property taxes and decreased social services including lowered school quality, business establishments and white middle-class families continue to flee to the suburbs. That flight, in turn, increases the isolation of low-income and minority children in the city schools. It also further reduces the ability of the cities to produce the funds to help them. This entire dismal cycle is already well known. Its effects have been publicized throughout the Nation as school budgets are cut, forcing systems to cut personnel, close schools for extended periods, and even consider 'payless paydays' for teachers. School buildings decay as maintenance funds are slashed. Meanwhile, tax bases decline as the exodus increases, further cutting revenues as needs mount. As the struggle goes on, the children using these schools are being cheated of the opportunity to obtain a decent education." *Id.*[4]

Although a metropolitan housing remedy would not fully desegregate the public schools of Chicago, it would

[4] Similar conclusions were recently reached by the United States Commission on Civil Rights:

> "Two of the sectors hardest hit by the extensive residential segregation which has accompanied rapid metropolitan growth have been education and employment. School desegregation has been thwarted and the separate school systems in the city and its surrounding suburbs are by no means equal." U.S. Commission on Civil Rights, *Equal Opportunity in Suburbia*, p. 64 (July 1974).

help undo the school segregation that HUD's discriminatory practices have caused in the Chicago area. At the same time, a metropolitan remedy would accelerate residential desegregation of the white suburbs[5] and allow some black children to escape from the segregated and inadequate inner city schools. This in turn would tend to relieve the inner city schools and treasuries of some of the burdens that they now bear from heavy concentrations of low income families who have meager taxable resources but need greater than average amounts of school and city services.[6]

To date, this Court has not sustained a multi-district metropolitan school desegregation order. *Milliken* v. *Bradley*, 418 U.S. 717 (1974); *Richmond School Board* v. *State Board of Education*, 412 U.S. 92 (1973). In each of these cases, the United States questioned the propriety of such metropolitan relief, urging that school desegregation cases "'can carry only a limited amount of baggage,'" quoting *Swann* v. *Board of Education*,

[5] The U.S. Civil Rights Commission has found:

> "Blacks, like whites, choose their housing primarily for convenience to work, appropriate size and special features, and managable cost. They are generally willing to live in interracial areas if necessary to find desirable housing but are reluctant to live in areas that are practically all white. Black reluctance to leave black neighborhoods is in large part caused by a realistic appraisal of the barrier of housing discrimination and of the treatment they and their families might receive in white areas." U.S. Commission on Civil Rights, *Equal Opportunity in Suburbia*, p. 14 (July 1974).

[6] See *Equal Opportunity in Suburbia*, p. 64, where the U.S. Commission on Civil Rights stated:

> "Although the central cities face more difficult education problems than the middle- and upper-income suburbs, they are forced by other economic considerations to spend proportionally less on schools and special programs. The city's cultural institutions and police, fire, and sanitation departments are just a handful of the competitors for its dwindling tax revenues."

See also, Presidents Commission on School Finance, *Schools, People & Money* (1972) p. 43 (quoted at p. 4, *supra*).

402 U.S. 1, 22-23 (1971).[7] In their memoranda in the *Richmond* (p. 25) and *Detroit* (pp. 25-26) cases, the Solicitors General said: "Racial discrimination in such areas as housing, employment and public expenditure are serious problems that must be attacked directly so that they can be eliminated from our society." We find it ironic that now, when the opportunity arises to attack "directly"—through the provision of metropolitan relief—housing discrimination to which the Federal government itself has been a party, the United States seeks to avoid such relief on the ground that it would entail substantial administrative problems (Pet. Br. pp. 34-40).

The metropolitan school remedies at bar in *Richmond* and *Detroit* would have required substantial busing in order to effectuate meaningful desegregation and would have entailed restructuring the administrative units. While NEA rejects the notion that such considerations constitute a per se bar to metropolitan relief in a school desegregation case, such factors are not present here. A metropolitan plan for subsidized housing would contribute meaningfully to school desegregation without additional busing and without merging school districts, creating new and larger school districts, or placing students in school jurisdictions different from the ones in which their parents reside.

To remedy school segregation declared unconstitutional in *Brown I*,[8] this Court looked to traditional equitable principles, "characterized by a practical flexibility in shaping . . . remedies and . . . adjusting and reconciling public and private needs." *Brown* v. *Board of Education*, 349 U.S. 294, 300 (1955). Since *Brown II* the task of the courts has been "to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution," *Swann* v. *Board of Education*, 402 U.S. 1, 16 (1971). A metropolitan remedy in this case would not only redress the racially discriminatory housing practices of HUD and CHA, but offer an important step toward bringing the promise of *Brown* to minority group children locked in inner city schools.

[7] Memorandum for the United States as Amicus Curiae, *Richmond School Board* v. *State Board of Education*, Nos. 72-549, 72-550, p. 26; Memorandum for the United States as Amicus Curiae, *Milliken* v. *Bradley*, Nos. 73-434, 73-435, 73-436, p. 26.

[8] *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

Respectfully submitted,

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